

SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF PHARMACY AND
MICHELLE MAI, R.PH.

Michelle Mai, R.Ph. (“Mai”) and the State Board of Pharmacy (“Board”) enter into this Settlement Agreement for the purpose of resolving the question of whether Mai’s license as a registered pharmacist will be subject to discipline. Pursuant to the terms of § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo Cum. Supp. 2008. The Board and Mai jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2008.

Mai acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence in her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Mai may present evidence in mitigation of discipline; the right to a

¹All statutory citations are to the 2000 Revised Statutes of Missouri, as amended, unless otherwise noted.

claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to her by law, Mai knowingly and voluntarily waives each and every one of these rights freely and enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Mai acknowledges that she has received a copy of the documents that were the basis upon which the Board determined there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Mai stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Mai's license as a pharmacist, License No. 1999140347, is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 338, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Mai in Part II herein is based only on the agreement set out in Part I herein. Mai understands that the Board may take further disciplinary action against her based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based on the foregoing, the Board and Mai herein jointly stipulate:

1. The Board is an agency of the state of Missouri created and established pursuant to § 338.110, RSMo, for the purpose of executing and enforcing provisions of Chapter 338, RSMo.

2. Mai is licensed by the Board as a licensed pharmacist, License No. 1999140347. Mai's license, is, and was at all relevant times herein, current and active.

3. Mai is concurrently licensed by the state of Arizona to engage in the practice of pharmacy. She is the holder of Arizona pharmacy License No. 12319.

4. From on or about October 12, 2004 to September 3, 2005, Mai was employed as a staff pharmacist at Bashas' Inc. Pharmacy #19 located at 3115 South McClintock Road, Tempe, Arizona.

5. From approximately October 2004 through August 2005, Mai processed fictitious prescription claims and prescription refills through the Bashas' pharmacy computer in order to submit rebate requests to several pharmaceutical manufacturers and increase the apparent volume of pharmacy business.

6. On or about January 25, 2006, Mai entered into a consent agreement with the Arizona State Board of Pharmacy. A copy of said agreement is attached hereto as Exhibit A and fully incorporated herein by reference.

7. Pursuant to the consent agreement between Mai and the Arizona Board of Pharmacy, Mai's Arizona license was suspended from January 25, 2006 to January 25, 2007. Additionally, following suspension Mai's license was placed on probation for two years, and she was to complete 400 hours of community service and pay a fine of \$16,500.

8. Mai's conduct in Arizona constitutes grounds for discipline pursuant Chapter 338, RSMo.

9. On or about June 16, 2008, Mai pled guilty to mail fraud, a class C felony offense in violation of 18 U.S.C. § 1341.

10. On or about November 18, 2008, Mai was found guilty of the aforementioned offense and was placed on probation with supervision for five years. She was also ordered to pay criminal monetary penalties of a special assessment of \$100.00, a fine of \$20,000.00, and restitution of \$27,067.60.

11. Under the terms of her probation, Mai is not to practice pharmacy from November 18, 2008 until June 16, 2013.

12. Section 338.055, RSMo Cum. Supp. 2008, provides in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

. . . .

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

. . . .

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

. . . .

(8) Denial of licensure to an applicant or disciplinary action against an applicant or the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, surrender of the license upon grounds for which denial or discipline is authorized in this state;

....

(13) Violation of any professional trust or confidence[.]

13. Cause exists for the Board to take disciplinary action against Mai's license pursuant to § 338.055.2(2), RSMo Cum. Supp. 2008, because Mai's guilty plea in federal court for mail fraud, a class C felony offense, in violation of 18 U.S.C. § 1341, is a guilty plea for an offense reasonably related to the qualifications, functions, or duties of a pharmacist and is an offense an essential element of which is fraud, dishonesty, and involves moral turpitude.

14. Cause exists for the Board to take disciplinary action against Mai's license pursuant to § 338.055.2(5), RSMo Cum. Supp. 2008, because Mai's fraudulent billing practices alleged herein constitute misconduct, fraud, misrepresentation, and dishonesty in the performance of Mai's duties as a licensed pharmacist.

15. Cause exists for the Board to take disciplinary action pursuant to § 338.055.2(8), RSMo Cum. Supp. 2008, because Mai's license was disciplined in Arizona and the grounds for the Arizona discipline are grounds for discipline in Missouri.

16. Cause exists for the Board to take disciplinary action pursuant to § 338.055.2(13), RSMo Cum. Supp. 2008, because Mai's fraudulent billing alleged herein

violated the professional trust and confidence of her employer, customers, and suppliers when she received rebates to which she was not entitled.

II.
Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2008.

1. **Mai's license as a pharmacist is suspended, followed by a period of probation.** Mai's pharmacist license, License No. 1999140347, is immediately SUSPENDED for a period of one year and immediately following suspension shall be placed on PROBATION for a period of five years. The periods of suspension and probation shall constitute the "disciplinary period." The terms and conditions of the disciplinary period are:

GENERAL TERMS APPLICABLE TO BOTH

THE SUSPENSION PERIOD AND THE PROBATIONARY PERIOD

A. Mai shall keep the Board apprised of her current home and work addresses and telephone numbers. If at any time Mai is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations she must provide the Board with all scheduled places of employment in writing prior to any scheduled work time.

B. Mai shall pay all required fees for licensing to the Board and shall renew her license prior to October 31 of each licensing year.

C. Mai shall comply with all provisions of Chapter 338 and Chapter 195; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

D. Mai shall make herself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Mai will be notified and given sufficient time to arrange these meetings.

E. Mai's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary order/agreement.

F. The parties to this disciplinary order/agreement understand that the Board will maintain this disciplinary order/agreement as an open record of the Board as provided in Chapters 338, 610, and 620, RSMo.

G. If, after disciplinary sanctions have been imposed, Mai ceases to keep her Missouri license current or fails to keep the Board advised of her current place of employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed.

H. Mai shall provide all current and future pharmacy and drug distributor employers and pharmacists/managers-in-charge a copy of this disciplinary order/agreement within five business days of the effective date of discipline or the beginning date of each employment. If at any time Mai is employed by a temporary employment agency, she must provide each pharmacy and drug distributor employer

and pharmacist/manager-in-charge a copy of this disciplinary order/agreement prior to or at the time of any scheduled work assignments.

- I. Mai shall not serve as a preceptor for interns.

TERMS FOR THE PERIOD OF SUSPENSION

J. Mai shall not engage in any activity or conduct in the State of Missouri for which a license as a pharmacist or a registration as a pharmacy technician is required.

K. Mai shall not be physically present in a pharmacy during suspension except as a bona fide customer. Mai may, however, be employed at a facility that maintains a pharmacy, so long as that employment does not include the practice of pharmacy, require registration as a pharmacy technician, or require and/or permit Mai's physical presence within the licensed (permit) area of the facility.

L. Mai shall not use the term "R.Ph.," "Pharmacist," or any other title or designation which would signify that Mai can legally practice pharmacy, in either printed or verbal form, during the suspension period.

M. Mai shall return all indicia of licensure, i.e., the original wall-hanging certificate, the computer generated 5" x 7" license, and the wallet card, to the board office on or before the effective date of suspension. The licenses will be returned to Mai at the end of the suspension period.

TERMS FOR THE PERIOD PROBATION

N. During the period of probation, Mai shall be entitled to practice as a pharmacist under Chapter 338, RSMo, as amended, if she is otherwise legally

permitted to do so, provided Mai adheres to all the terms of this Settlement Agreement.

O. Mai shall not serve as a pharmacist in charge or in a supervisory capacity without prior approval of the Board.

P. Mai shall take and pass the Board's designated jurisprudence (law) examination within 90 days of the beginning of probation. Mai shall register to take the Multistate Pharmacy Jurisprudence Examination (MPJE) online at the National Association of Boards of Pharmacy (NABP) website, www.nabp.net, no less than ninety (90) days prior to the date Mai desires to take the examination. Mai shall complete the registration materials and submit them and the required fee to NABP. If Mai is unable to obtain the registration materials online, Mai shall contact the NABP office for the required registration materials. Upon Mai's receipt of an Authorization to Test (ATT), Mai shall schedule the exam as instructed. If necessary, Mai will be given three opportunities to take and pass the examination. To prepare for the examination, Mai shall access the Board's website to review the laws and regulations. Mai will bear all costs involved in taking the examination.

Q. Mai shall contact the Board of Pharmacy office to request a current law packet and the required registration materials no less than 90 days prior to the date Mai desires to take the examination. Mai shall complete the registration materials and submit them and the required fee to the Board office. Upon Mai's receipt of an Authorization to Test (ATT), Mai shall schedule the exam as instructed. If necessary, Mai will be given three opportunities to take and pass the examination.

R. The Board accepts the documentation Mai has sent to it that shows proof of completion of her 400 community service hours as agreed to in her January 25, 2006 Arizona consent agreement.

2. Upon the expiration of the disciplinary period, Mai's license shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Board determines that Mai has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Mai's license.

3. No additional discipline shall be imposed by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the Board as a contested case in accordance with the provisions of Chapter 536, RSMo, as amended.

4. The Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Mai of Chapter 338, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

5. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Board or may be discovered.

6. If any alleged violation of this Settlement Agreement occurs during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before

it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Mai agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

7. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

8. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

9. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 338, 610, and 324, RSMo, as amended.

10. Mai together with her partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit, and forever discharge the Board, its respective members, employees, agents, and attorneys, including any former members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, expenses, and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise

out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

11. Mai understands that she may, either at the time the Settlement Agreement is signed by all parties, or within 15 days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Mai's license. If Mai desires the Administrative Hearing Commission to review this Settlement Agreement, Mai may submit her request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102. If Mai requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Mai's license.

12. If Mai does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

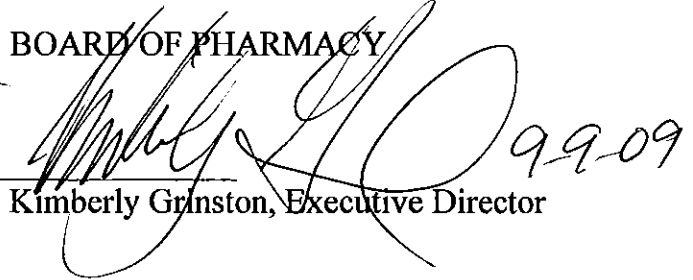
13. If Mai does not request review by the Administrative Hearing Commission, then the Board will move to dismiss its complaint at the Administrative Hearing Commission after the Settlement Agreement goes into effect.

LICENSEE



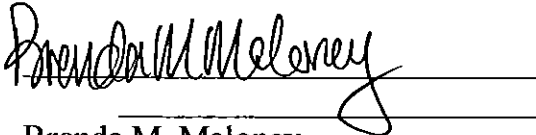
Michelle Mai, R.Ph.

BOARD OF PHARMACY

 9-9-09

Kimberly Grinston, Executive Director

QUARLES & BRADY

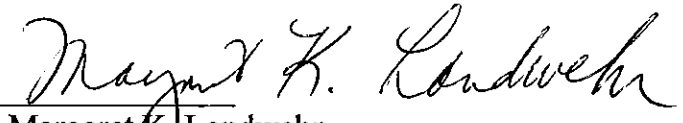


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